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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Appellant: Christer Almqvist | Docket No. : 00-148

Serial No.: 09/501,970 | Examiner : S. Tran

Filed : February 10, 2000 | Art Unit : 2643

For : AN ARRANGEMENT IN ACOUSTIC HEADSETS

900 Chapel Street
Suite 1201
New Haven, CT 06510-2802

REQUEST FOR REINSTATEMENT OF APPEAL

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313

Dear Sir:

In accordance with this paper Appellant hereby requests the reinstatement of the Appeal in the instant case and files concurrently herewith a supplemental Appeal Brief.

Respectfully submitted,

Christer Almqvist

By _____
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Date: August 21, 2003

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: "Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313" on August 21, 2003.

Rachel Piscitelli

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SUPPLEMENTAL APPEAL BRIEF

Hon. Commissioner of Patents and Trademarks
United States Patent and Trademark Office
Washington, D.C. 20231

Dear Sir:

This is a supplemental appeal to the Board of Patent Appeals and Interferences from the decision of the Examiner in Group Art Unit 2643 dated May 22, 2003, rejecting claims 1, 6 and 7. The Examiner indicated the subject matter of claims 2, 3 and 5 as being allowable and, accordingly, these claims are not involved in this Appeal.

REAL PARTY IN INTEREST

The real party in interest is the assignee Peltor AB.

RELATED APPEALS AND INTERFERENCES

There are no other appeals or interferences known to Appellant or Appellant's legal representative which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

STATUS OF CLAIMS

Claims 1, 6 and 7 have been rejected and are on Appeal. Claims 2, 3 and 5 have been indicated as containing allowable subject matter. A true copy of claims 1, 6 and 7, the claims on Appeal, are attached hereto in Appendix A.

STATUS OF AMENDMENTS

There are no unentered amendments.

SUMMARY OF THE INVENTION

The present invention is drawn to an acoustical headset and, more specifically, an arrangement of the button sets on an acoustical headset which allows the user of the acoustical headset to easily come into correct contact for allowing him to conveniently operate the buttons while the headset is positioned on the user's head. The acoustical headset comprises first and second auditory cups having a stirrup or headband interconnecting the cups. A microphone is provided on the headset for receiving ambient sound. An electronic control unit is likewise incorporated into the acoustical headset. The electronic control unit is actuated by a button set for transmitting sound from the microphone in a radio unit incorporated in the headset to loudspeakers in the auditory cups. In order to achieve the object of the present invention, that is, allow the user to put his hand on the ear cup where his fingers would automatically come into correct position for allowing him to conveniently operate the button sets, one of the auditory cups is provided with a plurality of depressions or recesses. The depressions or recesses are

disposed in an arc on the surface of the auditory cup. The depressions have a plurality of buttons wherein each plurality of buttons in each recess constitutes a button set. Each button set has a group of buttons which are functionally connected to one another. That is, buttons 18, 18' used to influence balance are in one depression. Buttons 19, 19' which are connected for volume control are in another recess. Buttons 20, 20' which are for channel searching are in another recess, and so on. Thus, each recess includes a plurality of buttons which operate the same function for the radio unit of the acoustical headset. The depressions and the buttons disposed in the depressions are arranged along a curve path in such a manner that the buttons are easily accessible to the wearer's fingers when the wearer moves his hand to the acoustical headset. This allows for the fingers of the wearer to automatically come into correct position for easy operation of the buttons in each of the recesses. By providing separate recesses for each function, the wearer can readily feel, without need of looking where his fingers should be to operate the desired button set which button set is easily accessed by the user because of the depression and button sets being disposed along a curved path adapted to the length of the wearer's fingers. See the specification, Page 1, lines 33 through Page 2, line 1 and Pages 2, line 21 through Page 4, line 17.

As can be seen from the foregoing discussion, Appellant has provided an improved acoustical headset wherein the user can easily operate the controls of a radio provided in the headset while wearing the acoustical headset and by simply locating his hand in the appropriate recess to operate the particular functional buttons desired at that particular time. The prior art fails to teach, disclose, or suggest the acoustical headset as claimed in claims 1, 6 and 7.

PRIOR ART RELIED UPON BY THE EXAMINER

Patent No.	Patentee	Issue Date
4,620,068	Wieder	October 28, 1986
5,794,127	Lansang	August 11, 1998
5,923,317	Sayler et al.	July 13, 1999

REJECTIONS OF RECORD

Claims 1 and 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wieder (U.S. Patent 4,620,068) in view of Lansang (U.S. Patent 5,794,127) and further in view of Sayler et al. (U.S. Patent 5,923,317). This is the sole rejection on appeal.

ISSUES

(1) Whether the teaching of Sayler et al. of a handheld video game control unit visible to the user can be properly combined by the Examiner with the primary and secondary references for rejecting the claims; and

(2) Assuming that Sayler et al. can be properly combined with the Langsang and Wieder references, whether those references collectively suggest the subject matter of claims 1, 6 and 7.

GROUPING OF CLAIMS

Claims 1, 6 and 7 are each an independent claim which contain separate patentable subject matter for the reasons to be discussed hereinbelow.

ARGUMENT

(A) THE REJECTION UNDER 35 U.S.C. 103(a) FAILS BECAUSE THE SAYLER ET AL. PATENT IS NOT PROPERLY COMBINABLE WITH THE LANSANG AND WIEDER PATENTS AS BEING A SIMPLE HINDSIGHT RECONSTRUCTION BY THE EXAMINER.

It is respectfully submitted that the Sayler reference is not properly combinable with the primary and secondary reference. It is submitted that the only motivation for employing the Sayler reference with the primary and secondary reference is Applicant's own disclosure. The Sayler et al. reference suffers from a major deficiency. The teachings in the Sayler reference which the Examiner relies on have nothing to do with an acoustical headset but rather a handheld control unit which is always visible to the user. If one has a handheld control unit as disclosed by Sayler et al., one would not need buttons arranged on an acoustical headset as claimed as all of the buttons would be held in one's hand and visible. The Examiner suggests that she gleans, from a handheld portable control unit for video games, a teaching which can be employed in an acoustical headset. Clearly this is nothing more than a hindsight reconstruction. The Examiner has stated that no motivation for looking at a handheld visible control set. The only

motivation can be Applicant's disclosure. Clearly the Examiner's position with respect to the Sayler et al. reference is untenable.

The case law on the need for a motivation statement to support the combination of three prior art references is quite clear where an Examiner as in the instant case alleges that all of the claim limitations can be found in the prior art references. Assuming arguendo, that each limitation in each claim of the instant application could somewhere be found in references, more is needed. As noted in In re Rouffet, 149 F.3d 1350, 1357, 47 USPQ 2d 1453, 1457 (Fed. Cir. 1998), most if not all inventions arise from a combination of old elements. However, identification in the prior art of each individual part claimed is insufficient to defeat patentability of the whole claimed invention. Id. Rather, to establish obviousness based on a combination of the elements disclosed in the prior art, there must be some motivation, suggestion or teaching of the desirability of making the specific combination that was made by the applicant. See In re Dance, 160 F.3d 1339, 1343, 48 USPQ2d 1635, 1637 (Fed. Cir. 1998); In re Gordon, 733 F.2d 900, 902, 221 USPQ 1125, 1127 (Fed. Cir. 1984).

The motivation, suggestion or teaching may come explicitly from statements in the prior art, the knowledge of one of ordinary skill in the art, or, in some cases the nature of the problem to be solved. See In re Dembiczak, 173 F.3d 994, 999, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999). Whether the Examiner relies on an express or implicit showing of motivation, the Examiner must provide particular findings related thereto. Id. Broad conclusory statements standing alone are not evidence of obviousness. Id. In the instant application, the Examiner has presented nò clear statement stemming from the references or elsewhere as to what would motivate, suggest or teach the combination of references.

Thus, having failed to make a proper obviousness rejection, claims 1, 6 and 7 should now be allowed.

(B) ASSUMING THE REFERENCES ARE PROPERLY

COMBINED, CLAIMS 1, 6 AND 7 ARE PATENTABLE THEREOVER

With respect to independent claims 1, 6 and 7, the Examiner in her rejection cited newly discovered reference to Sayler et al. As noted above, it is submitted that this reference could not be properly combined with either the primary or secondary references. Assuming arguendo that the reference can be properly combined or recesses in the control unit 40 of Sayler. Sayler does not teach locating the recesses or depressions along a path adapted to the length of the wearer's fingers. Nor is there any teaching of providing the recesses on a curved path. As the Examiner has stated in the final rejection, the primary and secondary references fail to "disclose that buttons within each group is located in a separate recess or depression". Sayler does not cure this deficiency. As noted previously, in order to achieve the object of the present invention, that is, allow the user to put his hand on the ear cup where his fingers would automatically come into correct position for allowing him to conveniently operate the button sets, one of the auditory cups is provided with a plurality of depressions or recesses. The depressions or recesses are disposed in an arc on the surface of the auditory cup. The depressions have a plurality of buttons wherein each plurality of buttons in each recess constitutes a button set. Each button set has a group of buttons which are functionally connected to one another. That is, buttons 18, 18' used to influence balance are in one depression. Buttons 19, 19' which are connected for volume

control are in another recess. Buttons 20, 20' which are for channel searching are in another recess, and so on. Thus, each recess includes a plurality of buttons which operate the same function for the radio unit of the acoustical headset. The depressions and the buttons disposed in the depressions are arranged along a curve path in such a manner that the buttons are easily accessible to the wearer's fingers when the wearer moves his hand to the acoustical headset. This allows for the fingers of the wearer to automatically come into correct position for easy operation of the buttons in each of the recesses. By providing separate recesses for each function, the wearer can readily feel, without need of looking where his fingers should be to operate the desired button set which button set is easily accessed by the user because of the depression and button sets being disposed along a curved path adapted to the length of the wearer's fingers. Nothing in Sayler suggests the foregoing arrangement nor the advantages achieved thereby in an acoustical headset.

Accordingly, the Examiner's rejection must fail.

CONCLUSION

For the reasons stated above, the Board of Appeals is hereby requested to reverse the Examiner's rejection of claims 1, 6 and 7 on obviousness grounds and to allow same.

APPEAL BRIEF FEE

A check in the amount of $600.00 was previously submitted to cover the costs of an Oral hearing, previously requested, and the Appeal Brief Fee. Should the

Commissioner determine that an additional fee is due, he is hereby authorized to charge said fee to Deposit Account No. 02-0184.

Respectfully submitted

Christer Almqvist

By _____

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Date: August 21, 2003

IN TRIPLICATE

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Rachel Piscitelli

APPENDIX A

1. An arrangement in hearing protection in the form of an acoustic headset, comprising a first auditory cup (10), a second auditory cup (11) and a stirrup or headband (12) interconnecting the auditory cups (10, 11), a microphone (13) being provided for receiving ambient sound, and an electronic control unit (15) actuable by a button set (14) being provided for transmitting sound from the microphone (13) and a radio unit (16) by the intermediary of loudspeakers (17) in the auditory cups (10, 11), characterized in that the button set (14) comprises a plurality of associated buttons (18, 18'; 19, 19'; 20, 20'; 21; 22) arranged in groups; and that each group of buttons, for activation by means of the fingers of the wearer, is disposed in a separate depression or recess (23, 24, 25, 26) in the first auditory cup (10) wherein the depressions or recesses (23, 24, 25, 26) are disposed in an arched surface on the first auditory cup (10), and wherein at least the depressions or recesses displaying a plurality of buttons, together with the buttons disposed therein, are disposed along a curved path adapted to the length of the wearer's fingers.

6. A hearing protection in the form of an acoustic headset comprising:

a first and a second ear cup interconnected by a stirrup or headband, said first and second ear cup each have an inner surface for contacting the ear of a wearer and an outer surface;

one loudspeaker in each one of the ear cups,

one microphone for receiving ambient sound,

one radio unit, and

one electronic control unit actuable by a button set for transmitting sound to the ear cups from the microphone and the radio unit by the intermediary of the loudspeakers, the buttons of the button set being arranged in groups wherein the buttons within each group are functionally connected to one another and each group is located in a separate recess or depression on the outer surface of the first cup.

7. A hearing protection in the form of an acoustic head set comprising:

one first and one second ear cup interconnected by a stirrup,

one loudspeaker in each one of the ear cups,

one microphone for receiving ambient sound,

one radio unit, and

one electronic control unit actuable by a button set for transmitting sound to the ear cups from the microphone and the radio unit by the intermediary of the loudspeakers, the buttons of the button set being arranged in a common recess in the first ear cup, the recess and the buttons therein being disposed along a curved path adapted to the length of the wearer's fingers.